

AGRICULTURE

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Eligibility of Equine Activities for Right to Farm Protection; and Agricultural
Management Practice for Equine Activities on Commercial Farms

Proposed New Rules: N.J.A.C. 2:76-2A.10 and 2B.3

Authorized By: State Agriculture Development Committee, Gregory Romano, Executive
Director

Authority: N.J.S.A. 4:1C-9i and 10.4

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004-278

Submit written comments by September 17, 2004 to:

Gregory Romano, Executive Director

State Agriculture Development Committee

P.O. Box 330

Trenton, New Jersey 08625-0330

The agency proposal follows:

Summary

The State Agriculture Development Committee (Committee) proposes these new rules pursuant to the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. The Act provides commercial farms with protection against private and public nuisance suits and unduly

restrictive municipal regulations. It includes a list of agricultural activities that may be entitled to such protections, and authorizes the Committee to expand the list of protected agricultural activities through rulemaking.

The list of protected activities in the Act does not include various equine activities, such as boarding and training, which are very common in New Jersey, nor do these activities fit into any of the broader categories of protected activities. (Breeding of horses is deemed the production of agricultural livestock, and has been entitled to the protections of the Act.)

The equine industry comprises a large percentage of New Jersey's agricultural industry. Without Right to Farm protections, responsible commercial equine operations are threatened by restrictive municipal ordinances and nuisance suits.

Proposed new N.J.A.C. 2:76-2B.3 expands the list of protected agricultural activities to include boarding, keeping, training, and rehabilitation of horses, horse riding and driving lessons, and complementary activities associated with the preceding activities. The complementary activities include clinics, open houses, demonstrations, educational camps, farm events, and competitions. The proposed new rule specifies that for a complementary activity to be entitled to Right to Farm protection, the activity must be in compliance with municipal standards.

The proposed new rule also specifies that income derived from raising horses and imputed income from pasturing horses may be used to satisfy the production requirements set forth in N.J.S.A. 4:1C-3, which a farmer must demonstrate to be eligible for the protections of the Act. It prohibits using fees received from boarding and training horses and from riding and driving lessons to satisfy the production requirements.

To receive the protections of the Act, a farmer must be in compliance with agricultural management practices (AMPs) promulgated by the Committee. The Act authorizes the SADC to adopt AMPs pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Proposed new rule N.J.A.C. 2:76-2A.10 sets forth an AMP for commercial equine activities.

The proposed new rule incorporates by reference “Agricultural Management Practices for Equine Activities,” Publication #E296, May 2004, a publication of Rutgers Cooperative Extension, New Jersey Agricultural Experiment Station, Rutgers, The State University of New Jersey, New Brunswick (“publication”). This publication is the result of extensive research conducted by Rutgers Cooperative Extension, including a review of equine-related literature, focus groups, and discussions with growers and other members of the equine industry with specialized equine knowledge or expertise. It addresses pasture management, fencing, shelter, farm stocking rates, manure management, composting, dust control, and complementary equine activities.

In addition to incorporating the publication by reference, the proposed new rule contains three qualifications. The first is that the sale and distribution of manure and composted products produced on the farm to off-farm users is not entitled to the protections of the Act, notwithstanding that the Rutgers publication includes recommendations for this practice. The Committee is excluding this activity because it is not included in the Act's list of protected activities. The Act explicitly protects on-site disposal of organic agricultural wastes, but does not protect off-site disposal of organic agricultural waste. N.J.S.A. 4:1C-9g. The Committee concluded that the Act did not protect off-site disposal of organic agricultural waste when it promulgated an AMP for on-farm compost operations, N.J.A.C. 2:76-2A.8. That AMP provides Right to Farm protection for on-farm compost operations provided that the finished compost product is not distributed or sold to off-farm users. It should be noted that the proposed new rule does not prohibit farmers from selling and distributing manure or composted products – the exclusion of these activities from Right to Farm protection means only that such activities are subject to local zoning and are not protected against private and public nuisance actions.

The second qualification in the proposed new rule is in recognition of the fact that the Rutgers publication may not address all equine activities or disputes that may arise on a farm. Thus, the proposed new rule states that if a Board or the Committee determines that the publication does not completely address an activity being considered for protection under the Act, the Board or Committee shall decide whether those aspects of the activity not addressed by the AMP constitute generally accepted agricultural operations or practices.

Lastly, the proposed new rule states that all recommendations in the publication shall become mandatory requirements with which a farmer will have to comply to receive the protections of the Act.

Rutgers Cooperative Extension may revise this publication as changes in industry standards warrant. The proposed new rule does not include such future supplements and amendments. Future supplements and amendments will be reviewed by the Committee and adopted pursuant to the provisions of the Administrative Procedures Act.

It should be noted that to receive the protections of the Act, farms must also meet the Act's definition of "commercial farm," be in conformance with all relevant federal or State rules or statutes, and not pose a direct threat to public health and safety. If an agricultural activity is not addressed by a promulgated AMP, the activity must conform with generally accepted agricultural management practices. Such a determination is to be made by the appropriate County Agriculture Development Board (Board) or the Committee.

As the Committee has provided a 60-day comment period on these proposed new rules, the rules are exempt from the rulemaking calendar requirement pursuant to N.J.A.C.

1:30-3.3(a)5.

Social Impact

The proposed new rules will have a positive social impact. The New Jersey equine industry is a significant component of the State's agriculture industry. The horse is the official State animal and, according to a survey commissioned by the New Jersey Equine Advisory Board in 1996, 81,000 acres are dedicated to housing New Jersey's estimated 49,000 horses. Providing Right to Farm protection to equine farms will help ensure that the farms remain viable.

Equine farms are important to the citizens of New Jersey because they maintain productive open space, provide recreational activities to the public, and help retain the rural agricultural character and scenic beauty in New Jersey. All of these factors contribute to a high quality of life which makes New Jersey a place where people want to live, work and enjoy recreational activities.

Adoption of the agricultural management practice will ensure that only responsible farmers will receive the protection of the Right to Farm Act. Municipal officials as well as neighbors of commercial farms are assured that commercial farm operators who comply with the AMP are adhering to established, recognized agricultural standards that has undergone the scrutiny of State agricultural and equine experts as well as the general public. On the other hand, some organizations and local government entities may want the control over equine activities to remain with local government entities.

The proposed AMP will also be used to resolve conflicts involving commercial farms. Any person or municipality aggrieved by an agricultural activity on a commercial farm is required to participate in a conflict resolution process set forth in the Act and associated regulations. The AMP will be the standard used by County Agricultural Development Boards (Boards) and the Committee in determining whether a farm is entitled to the protections of the Act. The commercial farm will be protected from nuisance lawsuits and restrictive municipal regulations only if the Boards or Committee find that it is in conformance with the adopted AMP and meets the other eligibility criteria of the Act.

There is also a significant social benefit for commercial farm operators in that if commercial farms utilize the adopted AMP, the potential for conflicts arising with farm neighbors will be minimized.

Economic Impact

The proposed new rules will have a positive impact on the State's economy by promoting the continuation of agriculture through the implementation of sound equine agricultural management practices. The equine industry significantly contributes to New Jersey's economy. In 1996, \$111 million was spent on labor, \$44 million on the boarding of horses, and \$43 million on feed and bedding supplies. Providing Right to Farm protections to commercial horse farms will help these farms stay in business and contribute to the economy of the State.

The proposed AMP will also reduce the expense and time that is involved in the Right to Farm Act's conflict resolution process. The AMP will provide standards regarding accepted equine agricultural management practices for all parties to use as a comparative benchmark.

While the costs associated with compliance with the agricultural management practice depend on a variety of factors including the size and type of equine operation, they are not anticipated to be onerous to the commercial farm operator.

Federal Standards Impact

A Federal standards analysis is not required because the subject matter of the proposed new rules is governed by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and is not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules are not expected to result in the generation or loss of jobs in New Jersey.

Agriculture Industry Impact

The proposed new rules will have a positive impact on the agriculture industry. The equine industry is a stable and significant component of the State's agriculture industry. Providing Right to Farm protections to commercial equine operations will help ensure that equine farms remain viable. In addition, many equine farms purchase hay from other

New Jersey farms. The rules, therefore, will benefit other types of agricultural operations.

Farms will also be encouraged to follow the recognized standards set forth in the proposed AMP, and by doing so, the potential for conflicts between the farms and farm neighbors will be minimized.

Regulatory Flexibility Analysis

The majority of land subject to protection under the Right to Farm Act is owned by small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Pursuant to N.J.S.A. 4:1C-9, if a commercial farm owner or operator voluntarily agrees to conform to adopted agricultural management practices and is in compliance with all other eligibility requirements, the commercial farm owner or operator will be protected from private and public nuisance lawsuits and municipal regulations. As such, any person aggrieved by a commercial agricultural operation will be required to participate in a conflict resolution process established by the Committee. The proposed new rules do not require a commercial farm to incur any costs in terms of reporting or record keeping, nor will commercial farms incur costs for reporting or record keeping if they choose to comply with the proposed AMP. The capital costs associated with compliance with the proposed AMP depends on a variety of factors, including, but not limited to, the size and type of commercial farm operation. Compliance with the rule will not require the commercial farm to employ professional services; accordingly, the rule will not require

them to incur any costs for employment of professional services. If commercial farm operators desire the protections of the Right to Farm Act, the proposed new rule will provide them with accepted practices for commercial equine operations, but compliance with the AMP should not have an adverse economic impact on the operation.

Smart Growth Impact

The proposed new rules would achieve smart growth and implement the State Development and Redevelopment Plan. The State Development and Redevelopment Plan designates a Rural Planning Area (Planning Area 4), which comprises much of the countryside of New Jersey where large masses of cultivated or open land surround rural regional, town, village and hamlet centers. The State Plan's intentions in the Rural Planning Area include maintaining large contiguous areas of farmland and promoting a viable agricultural industry. The proposed new rules will protect responsible commercial equine operations from nuisance suits and restrictive municipal ordinances, which could otherwise threaten to put the farm out of business. The protections provided by the proposed new rules will thus help assure the continuance and viability of the equine industry in New Jersey, thus furthering the goals in the State Plan's Rural Planning Area.

Full text of the proposed new rules follows:

2:76-2A.10 Agricultural management practice for equine activities on commercial farms

- (a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative

Extension publication “Agricultural Management Practices for Commercial Equine Operations,” Publication #E296, May 2004, as the agricultural management practice for equine activities on commercial farms, with the following conditions:

1. The sale and distribution of manure and composted products produced on the farm to off-farm users is not entitled to the protections of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.;
2. If the Board or Committee determines that the publication “Agricultural Management Practices for Commercial Equine Operations” does not completely address an agricultural activity being considered for protection under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., the Board or Committee shall decide whether those aspects of the activity not addressed by the publication constitute generally accepted agricultural operations or practices; and
3. All recommendations in “Agricultural Management Practices for Commercial Equine Operations” shall become mandatory requirements with which a farmer must comply to receive the protections of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

(b) Rutgers may update its publication as changes in industry standards warrant.

The adoption and incorporation by reference in (a) above does not include future supplements and amendments.

(c) Copies of “Agricultural Management Practices for Equine Activities” may be purchased from Rutgers, The State University of New Jersey, Publications Distribution

Center, Rutgers Cooperative Extension, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520.

2:76-2B.3 Eligibility of equine activities for right to farm protections

- (a) As used in this section, the following words and terms shall have the following meanings:

“Boarding” or “keeping” means providing horses with shelter, feed, and care on a continuing basis.

“Horse riding and/or driving lessons” means the instruction of people to enhance their ability to interact productively with horses that have been trained.

“Raising” means promoting the growth of horses as for profit.

“Rehabilitation” means the care of horses for the purposes of returning them to good health or useful condition.

“Training” means developing horses’ capacities in order to increase their salable value as well as enhance their ability to perform specific tasks and interact productively with people.

- (b) The following activities are entitled to the protections and benefits of the Right to Farm Act, provided that the commercial farm operation meets the criteria set forth in N.J.S.A. 4:1C-9: the boarding, keeping, training, and rehabilitation of horses, and horse riding and driving lessons.
- (c) The following activities entitled to the protections and benefits of the Right to Farm Act, provided that the activities comply with municipal standards and that the commercial farm operation meets the criteria set forth in N.J.S.A. 4:1C-9: complementary equine activities that are associated with the activities specified in

N.J.A.C. 2:76-2B.3(b), including, but not limited to, clinics, open houses, demonstrations, educational camps, farm events, and competitions.

- (d) Income derived from raising horses and imputed income from pasturing horses may be used to satisfy the production requirements in the definition of “commercial farm” set forth in N.J.S.A. 4:1C-3. However, fees received from boarding or training horses or from riding and driving lessons cannot be used to satisfy the production requirements in the definition of “commercial farm” set forth in N.J.S.A. 4:1C-3.

Gregory Romano,
Executive Director, SADC

Date